

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

RANDY J. BEST,	:	
	:	
Appellant,	:	
	:	Case No. 12 CVF-1232
vs.	:	
	:	(JUDGE BROWN)
OHIO STATE REAL ESTATE	:	
COMMISSION,	:	
	:	
Appellee.	:	

**DECISION & ENTRY REMANDING CASE TO THE OHIO STATE REAL
ESTATE COMMISSION**

The Court has before it an administrative appeal of the Ohio State Real Estate Commission (hereinafter “Commission”) in Administrative Case No. 2011-44. The Commission took administrative action against the real estate broker license of Randy J. Best (hereinafter “Best”). The Commission found that Best engaged in misconduct in violation of R.C. 4753.18(A)(6) as that section relates to Section 1, Articles 1 and 2 of the Canons of Ethics for the Real Estate Industry.

Best has timely appealed the Commission’s decision and sanction to the Court. Upon extensively and exhaustively reviewing the certified record, the Court remands this case to the Commission to apply their expertise to determine whether Best’s conduct as a broker, who appears to have additional ethical obligations to the public as stated in Article 2 of the Ethical Canons, engaged in gross negligence as the basis for the Commission’s decision. It is unclear to the Court the extent of Best’s duty to oversee the actions of his salesperson whose conduct the Commission also found sanctionable.

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Appellant's briefs and statements before the Commission focus extensively on Best's lack of knowledge of the salesperson's conduct while it was occurring. The Hearing Examiner's Findings of Fact and Conclusion of Law as well as the oral discussion before the Commission do not appear to find Best's lack of contemporaneous knowledge of the salesperson's actions to be misconduct. Rather, it appears that Best's failure to "personally oversee and direct the operations of Best Corporate Real Estate" (Report and Recommendation, p. 9) violated his duty as a **broker** to protect the public. The Hearing Examiner found that Best "should have been more aware of what was occurring in his brokerage." (Id.)

This case is brought under R.C. 4753.18(A)(6). The issue before the Commission was whether Best engaged in misconduct. Misconduct is a term of art. The Court finds the controlling law, which will govern its review after remand, to be found in *Kiko v. Ohio Department of Commerce, Division of Real Estate*, 48 Ohio St.3d 74 (1990) and *Vradenburg v. Ohio Real Estate Com.*, 8 Ohio App.3d 102 (10th Dist., 1982).

For convenience upon remand, the Court sets forth below the operative law in those decisions. It appears this case will turn upon the difference between mere negligence, which is insufficient to establish misconduct, and gross negligence, which constitutes misconduct. The Court remands this case to the Commission to apply its specialized expertise in real estate matters to make that determination.

In *Kiko*, the court discussed, with approval, the meaning of misconduct as follows:

"Black's Law Dictionary (5 Ed. 1979) 901, defines "misconduct" as "[a] transgression of some established rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or

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carelessness. * * *" Webster's New World Dictionary Third College Edition (1988) 866, defines "misconduct" as "unlawful, bad, or dishonest management," or "willfully improper behavior." We agree with appellant that, under these definitions, misconduct does not necessarily mean dishonesty. R.C. 4735.18(F) does not use the words "willful" or "wanton" to define misconduct. "Misconduct" under R.C. 4735.18(F) includes unprofessional conduct or that conduct involving any breach of duty which is prohibited under professional codes of ethics, or conduct which is contrary to law. Willfulness, good intentions or actual harm to a party are not necessarily controlling factors in such license suspension proceedings." *Kiko* at 77.

The *Kiko* court then cited an instance of gross negligence amounting to misconduct:

"In *Vradenburg v. Ohio Real Estate Comm.*, the court of appeals considered the legal meaning of the term "gross negligence" in R.C. 4735.18(F), and whether the Ohio Real Estate Commission, in applying its expertise in the field of licensing and disciplining real estate sales people, reached a conclusion that was supported by reliable, probative and substantial evidence and in accordance with law. The court found that under the stipulated facts, the commission did not err as a matter of law in ruling that *Vradenburg's* conduct constituted gross negligence." *Id.*

The *Vradenburg* court held the following:

"It is clear that *Vradenburg* did not ascertain all the pertinent facts concerning the property in this case. His testimony that, even upon a request of the buyers' realtor that he double check the school district, he would continue to rely upon the representation of the sellers indicates a failure on his part to fulfill his obligation to avoid error. We cannot say, as a reviewing court, that the real estate commission, which is composed of persons with real estate licenses who are presumably engaged in the real estate business, erred as a matter of law in concluding that *Vradenburg's* conduct constituted gross negligence." *Vradenburg* at 104.

The Court, like that in *Vradenburg*, turns to the real estate commission for its expertise to judge whether Best's conduct constitutes misconduct. Specifically, the Court would like a more complete understanding of the relationship between a broker and a salesperson who holds a license which appears less comprehensive than a broker's

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license. It would be helpful to know how the relationship between a broker and a salesperson affects the additional and separate duty of a broker to the public as set forth in Section 1, Article 2 of the Canons of Ethics for the Real Estate Industry.

Accordingly, this case is remanded for additional consideration in light of the Court's directive.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 07-08-2013

Case Title: RANDY BEST -VS- OHIO STATE REAL ESTATE COMMISSION

Case Number: 12CV001232

Type: ENTRY

It Is So Ordered.



/s/ Judge Kim Brown

Court Disposition

Case Number: 12CV001232

Case Style: RANDY BEST -VS- OHIO STATE REAL ESTATE
COMMISSION

Case Terminated: 15 - Transfer to another Judge or Court